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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555 (JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

June 2, 2011
10:06 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

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MATTER re Objection to Proof of Claim No. 66462 of JPMorgan Chase Bank, N.A. to the Extent it Asserts Claims Acquired from Washington Mutual Bank, FA Post-Petition are Secured (Misclassified Claim)

MATTER re Debtors' Eighth Omnibus Objection to Claims (Amended and Superseded Claims)

MATTER re Debtors' Thirty-Fifth Omnibus Objection to Claims (Valued Derivative Claims)

MATTER re Debtors' Sixty-Seventh Omnibus Objection to Claims (Valued Derivative Claims)

MATTER re Debtors' Ninety-Fifth Omnibus Objection to Claims (Valued Derivative Claims)

MATTER re Debtors' One Hundred Third Omnibus Objection to Claims (Valued Derivative Claims)

MATTER re Debtors' One Hundred Sixth Omnibus Objection to Claims (Amended and Superseded Claims)

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MATTER re Debtors' One Hundred Eleventh Omnibus Objection to
Claims (No Liability Claims)

MATTER re Debtors' One Hundred Twelfth Omnibus Objection to
Claims (Invalid Blocking Number LPS Claims)

MATTER re Debtors' One Hundred Seventeenth Omnibus Objection to
Claims (No Liability Non-Debtor Employee Claims)

MATTER re Debtors' One Hundred Eighteenth Omnibus Objection to
Claims (to Reclassify Proofs of Claim as Equity Interests)

MATTER re Debtors' One Hundred Nineteenth Omnibus Objection to
Claims (Amended and Superseded Claims)

MATTER re Debtors' One Hundred Twentieth Omnibus Objection to
Claims (No Blocking Number LPS Claims)

MATTER re Debtors' One Hundred Twenty-First Omnibus Objection
to Claims (To Reclassify Proofs of Claim as an Equity Interest)

MATTER re Debtors' One Hundred Twenty-Second Omnibus Objection
to Claims (No Liability Claims)

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MATTER re Debtors' One Hundred Twenty-Third Omnibus Objection
to Claims (Duplicative Claims)

MATTER re Debtors' One Hundred Twenty-Fourth Omnibus Objection
to Claims (No Supporting Documentation Claims)

MATTER re Debtors' One Hundred Twenty-Sixth Omnibus Objection
to Claims (Partially Settled Guarantee Claims)

MATTER re Debtors' One Hundred Twenty-Seventh Omnibus Objection
to Claims (Settled Derivatives Claims)

MATTER re Debtors' One Hundred Twenty-Eighth Omnibus Objection
to Claims (Settled Derivatives Claims)

MATTER re Debtors' One Hundred Twenty-Ninth Omnibus Objection
to Claims (No Liability Derivatives Claims)

MATTER re Debtors' One Hundred Thirtieth Omnibus Objection to
Claims (To Reclassify Proofs of Claim as an Equity Interest)

MATTER re Debtors' One Hundred Thirty-First Omnibus Objection
to Claims (To Reclassify Proofs of Claim as an Equity Interest)

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MATTER re Debtors' One Hundred Thirty-Second Omnibus Objection
to Claims (Valued Derivative Claims)

MATTER re Debtors' Forty-First Omnibus Objection to Claims
(Late-Filed Claims)

MATTER re Debtors' Forty-Second Omnibus Objection to Claims
(Late-Filed Lehman Programs Securities Claims)

MATTER re Debtors' Forty-Third Omnibus Objection to Claims
(Late-Filed Lehman Programs Securities Claims)

MATTER re Debtors' Seventy-Fourth Omnibus Objection to Claims
(To Reclassify Proofs of Claim as Equity Interests)

MATTER re Debtors' Seventy-Fifth Omnibus Objection to Claims
(To Reclassify Proofs of Claim as Equity Interests)

Transcribed by: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

MR. BERNSTEIN: Good morning, Your Honor. Mark

Bernstein from Weil Gotshal & Manges, attorneys for Lehman Brothers Holdings Inc. and affiliated Chapter 11 debtors. We have on the agenda today twenty-four uncontested matters and five contested matters. The first item on the agenda, the objection to the proof of claim of JPMorgan, that item is being handled by Curtis Mallet. So at this point, I'll turn the podium over to Lynn Harrison of Curtis Mallet.

THE COURT: Fine.

MR. HARRISON: Good morning, Your Honor.

THE COURT: Good morning.

MR. HARRISON: If it pleases the Court, Lynn Harrison of Curtis, Mallet-Prevost, Colt & Mosle, conflicts counsel for the debtors and debtors-in-possession, Your Honor. Your Honor, this is the hearing on the objection to proof of claim number 66462 of JPMorgan Chase Bank to the extent it asserts a claim acquired from Washington Mutual Bank post-petition, Your Honor.

Your Honor, by way of background, just briefly, as Your Honor, on the 9th of -- September 9, 2008, Lehman Brothers Holding executed a broad guaranty agreement purporting to obligate LBHI to pay for all of its liabilities of any kind, all of LBHI's subsidiaries to JPMorgan Chase or any affiliates of JPMorgan Chase. Your Honor, this agreement has come to be

1 known as the September guaranty. And pursuant to the September
2 guaranty, pledges were made pursuant to that guaranty pre-
3 petition.

4 After LBHI's bankruptcy petition, JPMorgan acquired
5 the assets of Washington Mutual Bank. And pursuant to that
6 transaction, Your Honor, acquired certain derivative contracts.
7 JPMorgan then filed a claim based on this WaMu contract and
8 applied approximately eighty million dollars worth of cash of
9 LBHI's to that claim purportedly on the basis that it was
10 covered by the September guaranty, a related security
11 agreement.

12 THE COURT: One moment, Mr. Harrison. There's
13 somebody who's on CourtCall who is not muted and we're hearing
14 you in the courtroom. Without knowing who it is, I'm just
15 going to ask everybody who is listening on the phone to please
16 mute your phones now. Thank you.

17 MR. HARRISON: Thank you, Your Honor.

18 Your Honor, on April 15th, 2011, LBHI and certain of
19 its affiliated debtors and the creditors' committee filed a
20 claims objection seeking an order reclassifying the proof of
21 claim number 66462 of JPMorgan to the extent it asserted
22 certain derivatives related claims that JPMorgan acquired from
23 Washington Mutual after LBHI's petition date, pursuant to the
24 September guaranty. And it also sought, Your Honor, a
25 declaration that the setoffs or application of approximately

1 eighty million dollars of cash received pre-petition and held
2 by JPMorgan pursuant to the September guaranty was improper,
3 Your Honor.

4 And, Your Honor, I'm not going to get into the details
5 of the pleadings that we filed but suffice it to say that the
6 primary gist of our argument was that I think it's well settled
7 that the rights of a creditor are fixed as of the petition
8 date. And notwithstanding whatever transpires post-petition,
9 the priority -- the characteristics of that claim were
10 determined at the time of the petition date. And we've cited
11 case law, Your Honor, at page 13 in paragraphs 34 and 35, with
12 respect to that particular issue.

13 Since the filing of that objection, Your Honor, we
14 have been contacted by counsel of JPMorgan Chase who has agreed
15 that the 80,313,435 dollars portion of the proof of claim
16 should be reclassified to reflect a proper classification as a
17 general unsecured claim. The parties' agreement is reflected
18 in a revised order, Your Honor. And I do have a copy of that
19 order. And if Your Honor wishes, I can approach the bench and
20 hand that up.

21 THE COURT: Yes, please. Hand it up.

22 MR. HARRISON: Thank you, Your Honor.

23 THE COURT: Okay. Thank you.

24 MR. HARRISON: Your Honor, the only changes from the
25 original proposed order is that it now contains language as

1 follows: expressly preserving the debtors' right to seek fees,
2 costs or damages from JPMorgan related to the filing of the
3 WaMu claim and the right of JPMorgan to contest any such
4 request, Your Honor. That's delineated in one of the comments
5 to the -- on the second page of the order.

6 In addition, Your Honor, it expressly preserves all
7 rights of the parties under the collateral disposition
8 agreement to which the debtors and JPMorgan are parties. Your
9 Honor, if Your Honor has any questions, I can address those at
10 this time. Otherwise, Your Honor, we seek the entry of that
11 particular order.

12 THE COURT: Any comments from any party in interest.
13 I see Mr. Novikoff here. And he's a distinguished observer.
14 So I'm going to give him a chance to either say something or
15 hold his peace, as they say.

16 MR. NOVIKOFF: Thank you, Your Honor. Harold
17 Novikoff, Wachtell, Lipton, Rosen & Katz, on behalf of JPMorgan
18 Chase Bank. And, Your Honor, I essentially am largely an
19 observer this morning. We have agreed to the order as
20 described by Mr. Harrison. And we have agreed to the treatment
21 of this claim as an unsecured claim against LBHI. I should
22 note for Your Honor that the acquisition of Washington Mutual
23 by JPMorgan occurred before the bankruptcy filing of LBSF which
24 was the underlying direct counterparty on the derivatives. And
25 it does not affect the treatment of that claim. Thank you,

1 Your Honor.

2 THE COURT: Okay. I think that makes Mr. Harrison
3 want to say something.

4 MR. HARRISON: Yes. Sorry, Your Honor. Just -- I'll
5 be brief. But all rights are reserved with respect to the
6 treatment with respect to that particular claim against LBSF.
7 This order does not address that.

8 THE COURT: So this order speaks exclusively to the
9 claim as against LBHI.

10 MR. HARRISON: Correct.

11 THE COURT: And all rights are reserved as to the
12 claim --

13 MR. HARRISON: Yes.

14 THE COURT: -- in the same amount against LBSF.

15 MR. HARRISON: Yes.

16 THE COURT: Fine. Understood. The order is to be
17 entered. It's approved.

18 MR. HARRISON: Thank you very much, Your Honor.

19 THE COURT: And you're excused.

20 MR. HARRISON: Thank you, Your Honor.

21 MR. BERNSTEIN: Thank you, Your Honor. Mark Bernstein
22 again from Weil on behalf of the Lehman debtors. At this
23 point, we'll turn to the regular omnibus objection portion of
24 the calendar. As typical, we may take some of these out of
25 order, if that's okay with you, in order to --

1 THE COURT: I've come to expect that.

2 MR. BERNSTEIN: Okay. Appreciate that. So at this
3 point, I'm going to turn the podium over to one of my
4 colleagues to handle the portion of the uncontested calendar.

5 MS. TRAPANI: Good morning, Your Honor. My name is
6 Christina Trapani with Weil Gotshal here on behalf of the
7 debtors. I'm going to address agenda items number 3, the
8 debtors' thirty-fifth omnibus objection, agenda item number 4,
9 the debtors' sixty-seventh omnibus objection, agenda item
10 number 4, the debtors' ninety-fifth omnibus objection, agenda
11 item number 6, the debtors' 103rd omnibus objection and agenda
12 item number 24, the debtors' 132nd omnibus objection. All of
13 these are uncontested matters.

14 With respect to the thirty-fifth omnibus objection,
15 since the original claims hearing on September 10th, 2010,
16 debtors have successfully settled with an additional
17 counterparty named in the thirty-fifth omnibus objection, MF
18 Global UK Limited. And we have a proposed third supplemental
19 order reducing these claims to a settled amount

20 We therefore respectfully request that Your Honor
21 grant a third supplemental order on debtors' thirty-fifth
22 omnibus objection reducing and allowing these claims.

23 THE COURT: It's granted as to MF Global UK Limited.

24 MS. TRAPANI: With respect to the sixty-seventh
25 omnibus objection, since the original claims hearing on

1 December 22nd, 2010, debtors have successfully settled with
2 three additional counterparties named in the sixty-seventh
3 omnibus objection, Advance Graphic Printing, Incorporated,
4 Halbis US Credit Alpha Master Fund and Pohjola Bank.

5 We have a proposed third supplemental order reducing
6 and reclassifying, in some instances, these claims to the
7 settled amount. We therefore respectfully request that Your
8 Honor grant a third supplemental order on debtors' sixty-
9 seventh omnibus objection reducing and reclassifying, in some
10 instances, and allowing these claims.

11 THE COURT: I'll enter a third supplemental order in
12 the form you've suggested.

13 MS. TRAPANI: With respect to the ninety-fifth omnibus
14 objection, since the original claims hearing on March 31st,
15 2011, the debtors have successfully settled with one additional
16 counterparty named in the ninety-fifth omnibus objection, Louis
17 Dreyfus Energy Services Limited Partnership. And we have a
18 proposed supplemental order reducing these claims to a settled
19 amount and reclassifying the claim against Lehman Brothers
20 Commodity Services, Incorporated.

21 THE COURT: I'll enter an order in reference to Louis
22 Dreyfus Energy Services L.P.

23 MS. TRAPANI: With respect to 103rd omnibus objection,
24 since the original claims hearing on April 28th, 2011, one
25 additional counterparty, Microsoft Global Finance, has failed

1 to file a response to the 103rd omnibus objection. And we have
2 a proposed supplemental order allowing this claim in the
3 modified amount. We therefore respectfully request that Your
4 Honor grant a supplemental order on debtors' 103rd omnibus
5 objection allowing this claim.

6 THE COURT: Yes. I will enter a supplemental order in
7 reference to the 103rd omnibus objection.

8 MS. TRAPANI: Turning now to the 132nd omnibus
9 objection, Your Honor, the debtors are seeking to reduce,
10 reclassify, in some instances, and allow thirty-three claims
11 relating to eighteen counterparties. Fifteen of these
12 counterparties failed to file any response to the 132nd omnibus
13 objection. Debtors seek to reduce, reclassify in some
14 instances and allow the twenty-nine claims of these fifteen
15 counterparties on an uncontested basis.

16 In addition, debtors have successfully settled with
17 three counterparties named in the 132nd omnibus objection,
18 Black Diamond Offshore Ltd., Double Black Diamond Offshore Ltd.
19 and George B. Kaiser, and are seeking to reduce, reclassify and
20 allow the four claims relating to these three counterparties.

21 There are twenty-five remaining claims named in the
22 132nd omnibus objection which belong to fifteen counterparties.
23 These counterparties either filed timely responses to the 132nd
24 omnibus objection or were granted extensions to the response
25 deadline by debtors. Settlement discussions have begun with a

1 number of these counterparties. Debtors respectfully request
2 that this Court adjourn the hearing as to these twenty-five
3 claims to June 30th, 2011 so that debtors may try to resolve
4 these claims with the counterparties.

5 We have an order for both the reductions and the
6 adjournments for Your Honor and respectfully request that Your
7 Honor grant debtors' 132nd omnibus objection reducing,
8 reclassifying in some instances, and allowing the thirty-three
9 claims named in Exhibit 1 therein and adjourning the twenty-
10 five claims in Exhibit 2 of our proposed order.

11 THE COURT: The 132nd omnibus objection is granted in
12 the manner that you've described.

13 MS. TRAPANI: Your Honor, if there are no questions, I
14 would like to turn the podium over to my colleague, Sarah
15 Decker, who will address agenda items number 2, 7, 12 and 15
16 through 20.

17 THE COURT: Okay. Fine.

18 MS. TRAPANI: Thank you.

19 THE COURT: And as you're changing positions, I'm
20 going to repeat what I said earlier about the need to mute
21 telephones for all people who are participating by CourtCall.
22 We are hearing heavy breathing.

23 MS. DECKER: Good morning, Your Honor. Sarah Decker
24 with Weil Gotshal for the debtors. As Christine mentioned,
25 I'll be covering agenda items numbers 2, 7, 12 and 15 through

1 20 in the uncontested matter section of today's agenda.

2 Agenda item number 2 is a carryover item from the
3 debtors' eighth omnibus objection to claims which Your Honor
4 previously granted. The eighth omnibus objection sought to
5 disallow and expunge claims that were amended and superseded by
6 subsequently filed claims. This matter is going forward today
7 solely as to the claim of Daniel Fryer, claim number 22765.
8 The objection as to all other claims was previously granted,
9 withdrawn or otherwise resolved.

10 Mr. Fryer reached out to the debtors with a concern
11 about which of his two claims should survive the objection.
12 The debtors spoke with Mr. Fryer and were able to resolve his
13 concern in the same manner as is set forth on the eighth
14 omnibus objection. Specifically, the debtors advised Mr. Fryer
15 that while the objection seeks to disallow and expunge claim
16 number 22765, his claim number 22911 will survive and the
17 information filed in support of claim 22765 will be treated as
18 having been filed in support of 22911. Mr. Fryer indicated
19 that his concern was resolved based on counsel's explanation.
20 Accordingly, the debtors respectfully request that the Court
21 grant the eighth omnibus objection with respect to Mr. Fryer's
22 claim number 22765.

23 THE COURT: The eighth omnibus objection is granted
24 with respect to Mr. Fryer's claim.

25 MS. DECKER: Thank you, Your Honor. Agenda item

1 number 7 is a carryover item from the debtors' 106th omnibus
2 objection to claims which Your Honor heard and granted at the
3 last hearing on April 28th. The 106th omnibus objection also
4 sought to disallow and expunge claims that were amended and
5 superseded by subsequently filed claims. This matter is going
6 forward solely on an uncontested basis with respect to the
7 claim of Great Bay Condominium Owners Association. The
8 objection as to all other claims was previously granted.

9 In the 106th omnibus objection, the debtors objected
10 to Great Bay's claim number 31955 as being amended and
11 superseded by a subsequently filed claim, number 62855. And
12 Great Bay opposed the debtors' objection. The debtors and
13 Great Bay have reached an agreement resolving the objection
14 with respect to Great Bay's claim. The parties have executed a
15 stipulation and proposed order and I have a copy of that
16 stipulation order for Your Honor to review this morning if you
17 would like to.

18 THE COURT: Why don't you hand that up?

19 MS. DECKER: May I approach?

20 THE COURT: Yes. Thank you.

21 MS. DECKER: The stipulation clarifies that the
22 assertions and bases for damages asserted under each of Great
23 Bay's claims will be consolidated into the surviving claim
24 number 31955. Claim number 62855 will be expunged voluntarily.
25 Great Bay's assertion that its claim number 31955 is entitled

1 to priority treatment is not affected by the stipulation. And
2 the debtors' rights to challenge Great Bay's assertion of
3 entitlement to priority and Great Bay's right to defend that
4 assertion are both reserved.

5 Accordingly, the debtors respectfully request that the
6 Court enter the stipulation and order agreed to by the parties
7 to resolve the objection with respect to Great Bay's claim.

8 THE COURT: I will so order the stipulation with Great
9 Bay Condominium Association in the form presented.

10 MS. DECKER: Thank you, Your Honor. Agenda item 12 is
11 the debtors' 119th omnibus objection. That objection seeks to
12 disallow and expunge claims that were amended and superseded by
13 subsequently filed claims. This matter is going forward on an
14 uncontested basis only. The debtors did not receive any formal
15 responses to this objection and all informal responses have
16 been resolved. Accordingly, the debtors respectfully request
17 that the Court grant the 119th omnibus objection.

18 THE COURT: The 119th omnibus objection is granted.

19 MS. DECKER: Thank you, Your Honor. Agenda item
20 number 15 is the 122nd omnibus objection. That objection seeks
21 to disallow and expunge claims for which the debtors have no
22 liability. These claims either state on their face that they
23 are against an entity that is not a debtor in these Chapter 11
24 proceedings and/or the supporting documentation establishes
25 that the claim is against a nondebtor entity.

1 The debtors received both formal and informal
2 responses to the objection which have been adjourned or
3 otherwise resolved. The debtors are proceeding only with
4 respect to the uncontested claims objections this morning and,
5 accordingly, the debtors respectfully request that the Court
6 grant the 122nd omnibus objection.

7 THE COURT: The 122nd omnibus objection is granted as
8 to the uncontested objections.

9 MS. DECKER: Thank you, Your Honor. Agenda item
10 number 16 is the 123rd omnibus objection. That objection seeks
11 to disallow and expunge claims that are duplicative, either
12 exactly or in substance, of other claims filed by the same
13 claimant on the claims register. Specifically, these claims
14 are filed by the same claimant against the same debtors and, in
15 most instances, for the same dollar amount and on account of
16 the same obligations. The debtors are proceeding only with
17 respect to the uncontested claims objections that have not been
18 adjourned or otherwise resolved. Accordingly, the debtors
19 respectfully request that the Court grant the 123rd omnibus
20 objection.

21 THE COURT: The 123rd omnibus objection is granted
22 with respect to the uncontested claims.

23 MS. DECKER: Thank you, Your Honor. Agenda item
24 number 17 is the 124th omnibus objection. That objection seeks
25 to disallow and expunge claims that violate this Court's bar

1 date order as they were submitted without any supporting
2 documentation. The debtors have resolved all of the informal
3 and formal responses that were received and we are thus
4 proceeding uncontested. The one formal response, that of
5 Richard Tessmer, was resolved by the debtors agreeing to
6 withdraw the objection to that claim and the debtors have
7 notified the claimant that we are doing so.

8 We are thus proceeding with the 124th omnibus
9 objection on an uncontested basis and respectfully request that
10 the Court grant the 124th omnibus objection.

11 THE COURT: the 124th omnibus objection is granted.

12 MS. DECKER: Thank you, Your Honor. Agenda item
13 number 18 is the 126th omnibus objection to claims. This
14 objection seeks to allow a portion of certain guaranty claims
15 consistent with the parties' agreement while permitting the
16 remaining portion of those claims to remain on the claims
17 register pending resolution. Notwithstanding anything to the
18 contrary in the objection, the total claim value of the
19 asserted claim is not being reduced. Rather, the claims are
20 simply being bifurcated to reflect that a portion of the claim
21 has been resolved and allowed while the remaining portion of
22 the claim remains unresolved and pending on the claims
23 register.

24 The debtors and the claimants have discussed the
25 nature of the 126th omnibus objection and, specifically, the

1 fact that such claims are being bifurcated. Further, the
2 parties have agreed to minimal changes to the order. And I
3 Have a blackline of that order if Your Honor would care to see
4 it.

5 THE COURT: Yes. I would like to see it.

6 MS. DECKER: May I approach?

7 THE COURT: Yes. Thank you.

8 MS. DECKER: The debtors are proceeding on an
9 uncontested basis with respect to the 126th omnibus objection.
10 Unless Your Honor has any questions about the order or the
11 objection, the debtors respectfully request that the Court
12 grant the 126th omnibus objection to claims.

13 THE COURT: The 126th omnibus objection to claims is
14 granted in accordance with the form of order you've presented
15 to me.

16 MS. DECKER: Thank you, Your Honor. Agenda item
17 number 19 is the debtors' 127th omnibus objection to claims.
18 This objection seeks the modification and allowance of claims
19 to which the parties have reached an agreement with respect to
20 the claim amount, classification and/or debtor entity that is
21 not reflected on the claimant proof of claim. The omnibus
22 objection seeks to modify the claims to conform to the parties'
23 agreement.

24 The debtors received only one response to the 127th
25 omnibus objection which has been adjourned while the parties

1 continue to work towards a resolution. We are thus proceeding
2 on an uncontested basis today. The debtors respectfully
3 request that the Court grant the 127th omnibus objection to
4 claims.

5 THE COURT: The 127th omnibus objection to claims is
6 granted on an uncontested basis.

7 MS. DECKER: Thank you, Your Honor. Agenda item
8 number 20 is the 128th omnibus objection. That objection seeks
9 the disallowance and expungement of derivatives claims that
10 have been settled between the parties either with a payment to
11 the debtors, with no amounts being due between the parties or
12 with the counterparty being granted an allowed claim against
13 one or more debtors in exchange for a release of its other
14 derivatives claims that the claimant has asserted relating
15 thereto.

16 The 128th omnibus objection is seeking to expunge the
17 claims as necessary to effectuate the parties' agreement. The
18 debtors did not receive any responses to the 128th omnibus
19 objection and are proceeding uncontested. Accordingly, the
20 debtors respectfully request that the Court grant the 128th
21 omnibus objection to claims.

22 THE COURT: The 128th omnibus objection to claims is
23 granted.

24 MS. DECKER: Thank you, Your Honor. At this time, I'd
25 like to turn the podium back over to my colleague, Mark

1 Bernstein. Mark is going to address the remaining uncontested
2 portion of today's hearing.

3 THE COURT: All right. Thank you.

4 MS. DECKER: Thank you.

5 MR. BERNSTEIN: Thanks. Mark Bernstein, Weil, Gotshal
6 & Manges, on behalf of the Lehman debtors. As Sarah indicated,
7 I'll address the remaining uncontested portion of the agenda.
8 The first one I'm going to address is the 111th omnibus
9 objection. The debtors had initially thought that we had a
10 resolution with the two claimants that we were going to go
11 forward with today. However, we're still working out some
12 additional language that they've requested in the order. So at
13 this time, we've agreed to adjourn this until the next claims
14 hearing and hopefully we'll have it resolved at that time.

15 THE COURT: Fine. So that'll be adjourned to June
16 30th?

17 MR. BERNSTEIN: June 30th, yes.

18 THE COURT: All right.

19 MR. BERNSTEIN: The next one I'm going to address is
20 the 112th omnibus objection. This relates to two claims that
21 were filed with respect to Lehman program securities but had
22 invalid blocking numbers. As Your Honor recalls, the blocking
23 number requirement in the bar date order was necessary for
24 these securities in order for the debtors to verify ownership
25 of the securities and avoid making duplicative payments. These

1 parties had requested additional time to investigate this
2 matter when we had initially had the hearing on this. Their
3 objection deadline has subsequently passed and they did not
4 file any responses. As a result, this is going forward on an
5 uncontested basis and we request the Court grant the 112th
6 omnibus objection with respect to these two particular parties.

7 THE COURT: It's approved.

8 MR. BERNSTEIN: Thank you. The 117th omnibus
9 objection relates to claims that were filed by various former
10 employees of the Lehman enterprise for wages, commissions,
11 bonuses, unused vacation days and the like. Lehman has
12 searched its records and determined that these employees were
13 not employees of any of the Chapter 11 debtors and none of the
14 debtors are responsible for these payments.

15 A number of responses were received to this objection.
16 The debtors have adjourned the objection with respect to all
17 those responses and we're going forward today solely on an
18 uncontested basis. We respectfully request that the Court
19 grant the 117th omnibus objection.

20 THE COURT: The 117th omnibus objection is granted on
21 an uncontested basis.

22 MR. BERNSTEIN: Thank you. I'm going to skip the
23 118th and come back to that when I get to the end since it's
24 similar to the 130th and 131st. I think we can take those
25 three together.

1 THE COURT: Just one moment. For the third time in
2 this morning's hearing, I'm interrupting counsel to request
3 that parties who are participating on the telephone mute their
4 lines. If this keeps up, I may make it a requirement that
5 everybody appear in person and that we'll just discontinue
6 CourtCall. It's absolutely required that there be no
7 interruption of the proceedings in this courtroom. Please mute
8 your phones or hang up. Okay. Thank you.

9 MR. BERNSTEIN: The next objection is the 120th
10 omnibus objection. Similar to the 112th, these parties filed
11 claims based on Lehman program securities. However, these
12 parties did not include any blocking number on their claim.
13 The blocking number was a requirement of the bar date order, a
14 necessity to evaluate the claims. This matter is going forward
15 solely on an uncontested basis and we request Your Honor grant
16 the 120th omnibus objection.

17 THE COURT: The 120th omnibus objection to claims is
18 granted.

19 MR. BERNSTEIN: Thank you, Your Honor. The 121st
20 omnibus objection is an objection to claims filed based on the
21 ownership of common stock of Lehman Brothers Holdings Inc. The
22 claims assert that they have a claim based on the ownership of
23 the stock and the loss of the value of such stock. Since such
24 claims are based entirely upon the ownership or the value of
25 common stock, these claims should be appropriately classified

1 as equity interest in Lehman Brothers Holdings Inc. and not
2 claims. Therefore this objection requests their
3 reclassification.

4 No responses were received. We respectfully request
5 that Your Honor grant the 121st omnibus objection.

6 THE COURT: The 121st omnibus objection is granted.

7 MR. BERNSTEIN: Thank you, Your Honor. The 129th
8 omnibus objection relates to derivative claims that were filed
9 against the debtors. The debtors have reviewed these claims
10 and these derivative contracts and determined that actually the
11 debtors are owed money on these contracts and there are no
12 amounts owed to these claimants.

13 A few responses were received. The debtors are
14 continuing to work with those claimants to discuss these
15 contracts. This matter is going forward on an uncontested
16 basis as to all other claimants who did object. And we
17 respectfully request Your Honor grant this 129th omnibus
18 objection.

19 THE COURT: The 129th omnibus objection is granted on
20 an uncontested basis.

21 MR. BERNSTEIN: Thank you. The final three I will be
22 handling today are the 118th, 130th and 131st omnibus
23 objections. These all relate to claims filed against the
24 debtors based on restricted stock units, contingent stock
25 awards, stock options or other equity awards held by former

1 employees of Lehman Brothers.

2 The various equity awards are provided to the employee
3 -- they provided the employees with the right to receive common
4 stock in Lehman Brothers Holdings Inc. at some point in the
5 future.

6 There were a number of responses filed to these
7 omnibus objections. The debtors are reviewing those responses.
8 And while we continue to do that, we have adjourned all of
9 those matters to a later date. As such, we're going forward
10 today only on an uncontested basis, parties who didn't respond.
11 We believe the law is that these should be treated as equity
12 interest in the debtors. And therefore, we request that these
13 claims be classified as equity interest.

14 As such, we respectfully request Your Honor grant the
15 118th, 130th and 131st omnibus objections.

16 THE COURT: Those three omnibus objections are granted
17 on an uncontested basis.

18 MR. BERNSTEIN: Thank you, Your Honor. That concludes
19 the uncontested portion of the agenda. And I will turn the
20 podium over to Erin Eckols to handle the contested portion.

21 THE COURT: All right. Thank you.

22 MR. BERNSTEIN: Thank you.

23 MS. ECKOLS: Good morning, Your Honor. Erin Eckols
24 with Weil Gotshal for the debtors. As Mr. Bernstein noted, I
25 will be handling the contested items on today's agenda which

1 are items 25 through 29. These are all carryover items from
2 prior omnis.

3 Agenda items 25 through 27 are carryover items from
4 the 41st, 42nd and 43rd omnibus objections which sought to
5 disallow any claims that were filed after the applicable bar
6 date. Because agenda items 25 through 27 present the same
7 issue, I plan to address them together unless Your Honor
8 objects to me doing so.

9 THE COURT: No. That's fine. You can address them
10 together.

11 MS. ECKOLS: Today the debtors are proceeding as to
12 one claim on the 41st omnibus objection, six claims on the 42nd
13 omnibus objection and three claims on the 43rd omnibus
14 objection. The claims at issue are set forth on Exhibit A to
15 the reply brief filed by the debtors at docket entry 17202.

16 As Your Honor has recognized in his prior decisions,
17 enforcement of the bar date in these Chapter 11 cases is
18 critically important. Here, strict application of the bar date
19 is warranted and the ten claims at issue should be disallowed
20 and expunged as untimely.

21 The claims at issue were sent internationally via
22 first-class mail six days or less prior to the applicable bar
23 date. Eight of the claims were mailed from Hong Kong, two of
24 the claims were mailed from Spain. The claimants provide no
25 legal argument as to why their claim should be exempted from

1 the Court-ordered deadline. Instead, the claimants assert that
2 their claim should be deemed timely because they were put into
3 the mail prior to the applicable bar date.

4 This argument fails under the clear dictate of the bar
5 date order which unambiguously required that claims be actually
6 received on or before the applicable bar date. Simply
7 depositing the claim in the mail is insufficient.

8 The claimants' argument that postmarking their claim
9 before the applicable bar date renders their claims timely also
10 fails under the governing case law. Importantly, the claimants
11 have not set forth an excusable neglect argument under
12 Bankruptcy Rule 9006(b) or analyzed any of the governing
13 Pioneer factors. The claimants have the burden of establishing
14 excusable neglect and they have not and cannot meet that
15 burden. Nevertheless, the debtors address the excusable
16 neglect issue in their reply brief and, as set forth therein,
17 the claimants cannot satisfy the hard line excusable neglect
18 standard followed in the Second Circuit.

19 There are four factors established under Pioneer for
20 applying the excusable neglect standard. First, the danger of
21 prejudice to the debtors; second, the length of delay and its
22 potential impact on judicial proceedings; third, the reason for
23 the delay including whether it was within the reasonable
24 control of the claimant; and four, whether the movant acted in
25 good faith.

1 Each of the Pioneer factors is briefed in the debtors'
2 reply and they strongly favor the debtors' position that the
3 claimants do not qualify for an excusable neglect exemption.
4 Because each of the arguments has been briefed, I will focus on
5 the most important factor in the excusable neglect analysis
6 which is the reason why a particular claim was untimely.

7 The key consideration is whether the untimeliness was
8 within the claimant's control. Here, the untimeliness was
9 entirely within the claimant's control and was a result of the
10 claimant's decision to, first, wait until shortly before the
11 bar date to mail their claim from a foreign country, Hong Kong
12 and Spain; and, two, to select first-class international mail,
13 a very slow class of mail without any guaranteed window of
14 delivery. Given the claimants' delay in mailing the claims
15 until less than a week prior to the deadlines and selection of
16 a slow delivery method, they could not have reasonably expected
17 that their claims would arrive from Hong Kong and Spain by the
18 deadlines. The untimeliness of the claims was entirely within
19 the claimants' control and that they do not meet the high bar
20 established for claiming excusable neglect. The claimants
21 could have mailed their claim sooner. They could have chosen a
22 faster class of mail or use a carrier with a guaranteed
23 delivery window, such as UPS, DHL or Federal Express, and they
24 chose not to do so.

25 Accordingly, the debtors respectfully request that the

1 forty-first, forty-second and forty-third omnibus objections be
2 granted as applicable to the claims set forth on Exhibit A to
3 the debtors' reply brief.

4 THE COURT: Let me find out if there are any claimants
5 affected by the forty-first, forty-second and forty-third
6 omnibus objection to claims who are either in court today or on
7 the telephone and who wish to respond to the argument that has
8 just been made.

9 MR. KAY (ph.): (TELEPHONICALLY): Your Honor? Yes.

10 THE COURT: I hear a voice but I can't tell who you
11 are.

12 MR. KAY: Your Honor, my name is Bethel Kay (ph.)
13 (indiscernible) for Yim Shueng Floria. My ID claim numbers
14 65031, 65032 and 65033. I'm calling from Hong Kong actually.
15 In fact, in my letter, I have explained that I posted
16 (indiscernible) on September 18, 2009, well before the deadline
17 of seven weeks before the deadline of 2nd November, 2009. It
18 normally takes less than a week for a letter from Hong Kong to
19 New York. (Indiscernible) seven weeks. And also I attached
20 here to the court a post stamp of 22nd of September, 2009. I
21 posted a letter seven weeks before. So the agents, EPIQ --
22 EPIQ Bankruptcy Solution agent should be able to submit my form
23 earlier to the court. So it is totally unfair for me that they
24 have rejected my claims on these three claims.

25 THE COURT: Can you tell me a little bit about your

1 claims and what they consist of?

2 MR. KAY: It is concerning Lehman Brothers. There are
3 three claims. One is 100K; another is another 100K. The third
4 one is 50K (indiscernible) of Lehman Brothers.

5 THE COURT: And are these claims filed in their
6 individual capacity or on behalf of an entity?

7 MR. KAY: It's a professional investment.

8 THE COURT: And --

9 MR. KAY: I'm a professional investor. I'm not a
10 company.

11 THE COURT: And you are a resident of Hong Kong?

12 MR. KAY: Yes. I'm a resident of Hong Kong. I tried
13 my best to send the letter seven weeks before the deadline
14 post-date. From Hong Kong to New York it's very convenient as
15 a post-date. Usually it takes less than one week. We have a
16 lot of correspondence. It's very common. And at that time
17 it's not a busy time. It's September, not busy like other
18 season. So I don't know why it's taking so long for the
19 (indiscernible) agent which I have to send to them something to
20 the court. In fact, I check on the internet that they filed a
21 case on 6th of November 2009 with the court which is twelve
22 days after the deadline.

23 THE COURT: Did you give any consideration to using an
24 international currier service that would assure delivery prior
25 to the expiration of the bar date?

1 MR. KAY: In fact, I have around several reasons.
2 It's very safe. And in fact, the post office, the P.O. Box
3 (indiscernible) which I post in is a P.O. Box which is not an
4 address. So that means I have to go there. Also put inside a
5 P.O. Box for that particular issue, EPIQ Bankruptcy Solution
6 agents to take out from the P.O. Box to submit to the court.
7 So this part of the event is out of my control, totally out of
8 my control, even I deliver by hand (indiscernible) to formally
9 submit to the court. I don't have another choice.

10 THE COURT: I'm having some difficulty in
11 understanding what you just said. Are you saying that because
12 you were sending this to a post office box that you were unable
13 to use a international courier service such as DHL or Federal
14 Express?

15 MR. KAY: In fact, they are using the same ones.
16 (Indiscernible) are not the difference. It's the time that
17 company submits to the court is when the court received on
18 November 6, 2009 which is (indiscernible). I suppose my post
19 arriving in the P.O. Box some time in September. The reason I
20 don't now that particular forms was submitted to the court
21 sometime in November which is beyond the 2nd of November
22 deadline. I don't think it's a postal issue because when I send
23 the letter in 18th of September, the letter should have arrived
24 in the U.S. Post Office postal P.O. Box by the end of September
25 anyway. So it's a matter of that company how to arrange for

1 the delivery, for the pickup and delivery and the submission to
2 the court before the deadline which is beyond my control. Even
3 I personally hand in that one (indiscernible) by whomever in
4 the system.

5 THE COURT: I'm not understanding precisely what
6 you've said. In what respect was this beyond your control?

7 MR. KAY: Sorry?

8 THE COURT: How was this beyond your control?

9 MR. KAY: I have (indiscernible) who send in the
10 complete form well before the deadline, more than seven weeks.
11 So normally, it takes a week from Hong Kong to New York, the
12 post-date. And the post office delivered to the United States
13 station. It's not (indiscernible) post-date like that.

14 THE COURT: Do you have anything more you want to add?

15 MR. KAY: Yes, Your Honor. I just want to have the
16 Court's approval to have my claims allowed.

17 THE COURT: Okay. Let me find out if there's anyone
18 else who's on the telephone who wishes to be heard on this
19 question.

20 MR. KAY: Thank you, Your Honor.

21 THE COURT: Is there anyone else who wishes to be
22 heard? All right. We have one party that is the subject of
23 this objection. And I'm not sure which of the omnibus
24 objections this claim falls under. Which one is it?

25 MS. ECKOLS: It's the forty-third omnibus objection.

1 And if I could have an opportunity to briefly respond.

2 THE COURT: Yes. I'm going to give you that
3 opportunity. Because the forty-first and the forty-second
4 omnibus objections have not been responded to during today's
5 hearing, those objections are granted. And we'll just deal
6 with the forty-third.

7 MS. ECKOLS: Thank you, Your Honor. Unfortunately, I
8 don't believe I can pronounce the claimant's name. So I'm just
9 going to refer to as claim numbers which he indicated were
10 65305, 65306 and 65307.

11 These claims were dated on October 27th of 2009 and
12 were only submitted and deposited in the mail system six days
13 prior to the applicable November 2nd, 2009 bar date. Given
14 that these claims were coming all the way from Hong Kong,
15 putting them in the mail and choosing regular first-class mail,
16 it was unreasonable to expect that they would be received in
17 New York and clear customs prior to the applicable bar date.

18 As far as the point regarding using an international
19 courier such as FedEx or DHL or UPS, we had many claimants who
20 managed to send their claim that way. There was a street
21 address provided in the bar date order if the parties wanted to
22 use an overnight courier service.

23 Given that the claimant could have deposited their
24 claim in the mail earlier and could have selected an alternate
25 method, even international express mail if he didn't want to

1 use an overnight courier, the untimeliness of the claims was
2 entirely within his control. And thus, we believe he does not
3 meet the excusable neglect standard and that is claims should
4 be disallowed and expunged under the forty-third omnibus
5 objection.

6 THE COURT: Do your records reflect when these claims
7 were actually received?

8 MS. ECKOLS: Yes, Your Honor. They were received on
9 November 10, 2009. They were received roughly thirteen days
10 after they were mailed.

11 THE COURT: So that even -- this is one of the
12 problems I'm having. And I was actually dwelling on this issue
13 in chambers before coming out. And it's interesting that we
14 have to now focus on it because it gets to the question of
15 whether one can ever reasonably rely upon the postal service,
16 whether it's domestic or international, in efforts to comply
17 with a bard date that mandates receipt by a certain specified
18 date. And here, given the fact that the actual delay was
19 almost two weeks from the date of mailing, even if this
20 particular claimant had filed the claim by mail ten days before
21 the bar date, that would have been insufficient. So it raises
22 a question in my mind as to whether one can ever rely upon the
23 mail from Hong Kong when sending something to the United States
24 if it's supposed to arrive by a date certain. And that gets
25 into the question of reasonable conduct on the part of the

1 claimant to comply with the bar date. Here, the fact that it
2 was six days, in effect, is irrelevant. It could have been
3 ten; it could have been twelve and it still would have been too
4 late.

5 So I'd be interested in your response to this very
6 general question. Can you ever timely file a claim by mail?
7 Can you ever be safe doing that if the bar date depends upon
8 receipt?

9 MS. ECKOLS: Well, as far as whether you can be safe,
10 I think I'd rather address it as or state that thousands of
11 people managed to put their claim in the mail and it was
12 received timely.

13 THE COURT: Understood.

14 MS. ECKOLS: Now the vagaries of the mail system do
15 occasionally result in some -- and they could result in some
16 extraordinary delays. This thirteen days from Hong Kong does
17 not, in fact, appear to be an unreasonable amount of time for
18 the mail to come in. And in fact, the Hong Kong postal system
19 does put some rough guidelines for parties, not a guarantee,
20 but that they -- to look for when they mail their claims as far
21 as receipt. And for claims to arrive in the U.S., the minimum
22 calendar days would have been seven. So the claimant wouldn't
23 even have made it under that. The Hong Kong post office and
24 the standards that they publish that we attached to our reply
25 brief indicate that the Hong Kong post office thinks it will

1 take at least five to sixteen working day for a piece of mail
2 to make it to the United States. So five working days, seven
3 calendar days. This claimant was still out of time.

4 If there is an issue with respect to what is something
5 that looks unreasonably long time in the mail, that is
6 something that the debtors are certainly looking at. And quite
7 frankly, the debtors have really struggled with the same issue
8 that you raised: how do you apply something reasonable and
9 treat claimants consistently and fairly given the fact that
10 sometimes mail is uncertain. Now the easiest way to have done
11 this would have been to use something with a guaranteed form of
12 delivery. But the bar date order did not require people to
13 select that method.

14 So it is something that we do struggle with. But we
15 submit that dropping your claim via first-class regular mail
16 six days before the bar date from Hong Kong is simply not
17 reasonable. It was not going to make it there in time.

18 THE COURT: Okay. I'm going to grant the objection
19 with respect to the claim that we've been -- well, the three
20 claims that we've been discussing, the first one being 65306,
21 principally on the basis that the reason for the delay was
22 substantially within the control of the claimant inasmuch as
23 dropping a claim in the mail in Hong Kong amends to a form of
24 proof of claim roulette. There is no assurance whatsoever
25 based upon the published data that a claim mailed on any

1 particular day prior to the bar date with assurance will be
2 delivered by the specified date. Now while that raises some
3 questions as to burden on the part of the claimant in having to
4 either mail the proof of claim substantially ahead of the proof
5 of claim bar date or by means of guaranteed delivery through
6 overnight courier, nonetheless, this is something that is
7 subject to the claimant's control.

8 Consistent with applicable case law in the Second
9 Circuit and my own decision in the Lehman Brothers case last
10 year, we apply a fairly strict approach to the enforcement of
11 proof of claim bar dates in this circuit. And excusable
12 neglect is a very difficult standard to meet. Under the
13 circumstances, while I appreciate the claimant's dilemma, the
14 claim is disallowed on the basis of its untimely delivery. And
15 I'll entertain an order that's consistent with these remarks.

16 MS. ECKOLS: Thank you, Your Honor. Moving to agenda
17 item 28, which is the seventy-fourth omnibus objection, a
18 carryover item from that omni -- and the seventy-fourth omnibus
19 objection sought to reclassify certain proofs of claim as
20 equity interest. And Your Honor previously granted that
21 omnibus objection as to the vast majority of claims at a prior
22 hearing.

23 Today we are proceeding as to six claims on a
24 contested basis. Claim 4737 by Bowaut, Inc.; claim 10262 by
25 Sandra Stolk; claim 10261 by Herman Stolk; claim 6157 by Gloria

1 Stainkamp; and claim 63353 and 63354 by Peter Thompson.

2 The six claims at issue are all based on the ownership
3 of LBHI preferred stock and thus should be reclassified as
4 equity interest in the debtors and subordinated pursuant to
5 Section 510(b) of the Bankruptcy Code.

6 As set forth in the seventy-fourth omnibus objection,
7 the holders of equity securities in the debtors have an
8 interest in but not a claim against the debtors. Stock is an
9 equity security under Sections 101.16 and 101.49(a) of the
10 Bankruptcy Code which defines an equity security as, among
11 other things, stock or a share in a corporation.

12 Moreover, Section 510(b) requires that claims seeking
13 damages from the purchase or sale of securities, such as stock,
14 in the debtors be subordinated. It forecloses the possibility
15 that disappointed shareholders, like the holders of the six
16 claims at issue, receive equal or better treatment than the
17 holders of valid general unsecured claims.

18 Three of the claimants, Bowaut, Inc., Herman Stolk and
19 Sandra Stolk, held LBHI's 6.5 percent Cumulative Preferred
20 Stock Series F and argue that their preferred stock should be
21 treated as a debt instrument instead of an equity security.
22 For the reasons set forth in the debtors' reply brief, filed at
23 docket entry 17147, the claimants attempt to recharacterize
24 their investment in LBHI as debt fails.

25 Under the applicable facts and law, Series F preferred

1 stock is an equity instrument not a debt instrument and the
2 claimant should be treated as shareholders. Courts generally
3 treat preferred stock as an equity interest and the
4 determination of whether preferred stock is a debt or equity
5 instrument is based on the terms of the stock. Courts look at
6 several factors including the name given to the instrument, the
7 intent of the parties, the presence or absence of a fixed
8 maturity date, the right to enforce payment of principal or
9 interest, the presence or absence of voting rights, the status
10 of the contribution in relation to the regular corporate
11 contributors and certainty of payment in the event of the
12 corporation's insolvency or liquidation.

13 Courts have relied most heavily on the certainty of
14 payment factor and where there is not certainty of payment,
15 preferred stock has been treated as equity.

16 Here, the characteristic of the Series F preferred
17 stock establishes that it is properly characterized as an
18 equity interest. Importantly, the Series F preferred stock had
19 no guarantied right of payment such as a principal or interest
20 payment. The payment of dividends was contingent upon (1) LBHI
21 declaring a dividend; and (2) there being funds legally
22 available for payment of a dividend.

23 Other factors further establish that the Series F
24 preferred stock is properly classified as equity. The name of
25 the instrument, it was named preferred stock; the intent of the

1 parties, as demonstrated by the fact that this preferred stock
2 was structured so that dividends were paid when declared by
3 LBHI instead of a debt instrument with set principal and
4 interest payments. There was no fixed maturity date but an
5 optional redemption date; there were the existence of voting
6 rights for the Series F preferred stockholders. In certain
7 circumstances, the holders of that stock had a right to vote
8 with other holders of preferred stock to elect directors to
9 LBHI. And before taking certain actions, LBHI had to obtain
10 the vote of at least sixty-six and two-thirds percent of the
11 Series F preferred stockholders. Moreover, the Series F
12 preferred stock was ranked equally with LBHI's Series C, D and
13 E preferred stock issuances.

14 Finally, in the event of a liquidation or dissolution,
15 the holders of a Series F preferred stock would only be
16 entitled to payment from "assets available for distribution to
17 stockholders". And they would share on a pro rata basis with
18 holders of any other preferred stock ranking equally with the
19 Series F preferred stock.

20 Accordingly, the Series F preferred stock must be
21 treated as the parties intended, as stock in LBHI, and these
22 shareholders should not be allowed to bootstrap their way to
23 parody with general unsecured creditors.

24 The holders of the other three claims at issue today,
25 Gloria Stainkamp and Peter Thompson, set forth no legal

1 argument for objecting to the classification of their proofs of
2 claim as equity. Ms. Stainkamp states that she is opposing
3 reclassification of her claim in equity in order to keep
4 herself in the game. This is not a legally valid reason for
5 treating her other than what she is: a disappointed holder of
6 LBHI equity interest.

7 Mr. Thompson provides even less information as to the
8 basis for his opposition. His response is limited to the
9 single statement that Lehman Brother's Holdings Inc. misstated
10 their financial statements. Even if one gave a very generous
11 interpretation to Mr. Thompson's response and assumed that Mr.
12 Thompson was trying to assert that his claim is for fraud
13 related to the ownership of LBHI stock and that's exempt from
14 Section 510(b) subordination provision, Mr. Thompson's argument
15 would fail.

16 The law in this circuit is very clear. Under the
17 Enron and WorldCom decisions, at 341 B.R. 141 and 329 B.R. 10,
18 respectively, claims for fraud in the purchase or ownership of
19 stock fall squarely within Section 510(b) and must be
20 subordinated. Accordingly, Ms. Stainkamp and Mr. Thompson's
21 opposition should be overruled.

22 In summary, while it would be more advantageous for
23 Ms. Stainkamp, Mr. Thompson, Mr. and Mrs. Stolk and Bowaut,
24 Inc. to avoid classification of their claims as equity, that is
25 not a legally valid basis for treating these claimants as other

1 than what they are: shareholders in LBHI. Thus, the debtors
2 respectfully request that the Court grant the seventy-fourth
3 omnibus objection as to their claim.

4 And, Your Honor, I know that Ms. Stainkamp is present
5 today and may wish to make a statement. The debtors are not
6 certain as to whether any of the other affected claimants are
7 present today.

8 THE COURT: Let's find out. Are there any affected
9 claimants either present in person or by telephone who wish to
10 be heard? There's one person here. Is there anyone on the
11 telephone? I hear no response. There's one person who's
12 coming forward. And I gather she's the only person who wishes
13 to be heard at this point.

14 MS. STAINKAMP: Your Honor, Gloria Stainkamp. I have
15 a problem with timing as well. I purchased 16,000 dollars of
16 securities of callable -- it's all here -- from Lehman
17 Brothers. On the 5th September '08, a new problem came up so
18 fast that in any other dealing -- I know I've had stock
19 cognizant at the time that if there's a rise and a fall, that
20 only makes me feel how awful the market degenerated to such a
21 way that in five, six, seven days, everything's gone.

22 THE COURT: What is it that you bought? What's the
23 security that you bought?

24 MS. STAINKAMP: Well, I -- it's a funny name, Lehman
25 Brothers HLDG -- I imagine Holdings -- Floating Rate Perpetual

1 Callable. This was offered that day by the salesman. And this
2 gentleman that I've had exchanges with said, oh, Lehman
3 Brothers. That's the best thing you could get. It's a new
4 offering. And I said, okay, take my money. Okay. I'll go for
5 it. The reputation was there. That's what kills me on this
6 that I get so duped for five days and it was gone. And that's
7 my problem and I'm stuck with it. But thank you for hearing
8 me.

9 THE COURT: Okay. I think regrettably you are stuck
10 with it. And I can't speak to what other claims or remedies
11 you may have in connection with the transaction. But insofar
12 as I'm being asked to consider an objection to a proof of claim
13 because what you really have is an equity interest in the
14 company and not a claim that is entitled to be treated along
15 with all other unsecured claims, I really don't have much
16 choice. The debtors make a very powerful argument that all
17 that you have is an equity interest. I think they're right.
18 And given the debt claims in this bankruptcy case, it's clear
19 that equity interests will not recover anything because in the
20 order of priority in bankruptcy, equity comes at the bottom of
21 the heap.

22 Under the circumstances, it is not foreseeable that
23 you will recover anything from the bankruptcy case. Whether or
24 not you have any claims against parties that induced you to
25 purchase this security ten days prior to the bankruptcy, I

1 don't know. I make no comment on that one way or the other.

2 I do know, however, that the newspapers, wire services
3 and cable television networks that dealt with business issues
4 were very active during the month of September 2008 in
5 commenting on the growing financial crisis. And except for the
6 more sophisticated, it was probably not a good idea to be
7 acquiring securities of any financial firm at that time.

8 Under the circumstances, I regret that I must grant
9 the objection and I wish you well.

10 MS. ECKOLS: Thank you, Your Honor. Is the objection
11 granted as to all the other claimants as well?

12 THE COURT: The objection is granted as to all the
13 others including the Stols who appear not to be present in
14 court or on the telephone. They have raised a more
15 sophisticated question which is whether or not preferred stock
16 under certain circumstances might be recharacterized as a debt
17 instrument. But for all the reasons that have been advanced
18 both in oral argument and in the omnibus reply docketed at
19 17147, this preferred stock is exactly what it purports to be:
20 preferred stock. And no cause has been shown for reclassifying
21 it as a debt instrument. Under the circumstances, all of these
22 objections at docket -- excuse me -- at agenda number 28 and 29
23 are granted.

24 MS. ECKOLS: Thank you, Your Honor.

25 THE COURT: Is there any more for today?

1 MS. ECKOLS: No. Agenda item 29 was actually a couple
2 of other claimants.

3 THE COURT: Oh, I'm sorry. It's all 28?

4 MS. ECKOLS: Yes.

5 THE COURT: Then I misspoke. It's the reclassi --
6 it's number 28.

7 MS. ECKOLS: Okay. I'm going to move on to agenda
8 item 29 --

9 THE COURT: Fine.

10 MS. ECKOLS: -- at this point.

11 THE COURT: I thought we were doing them all together.

12 MS. ECKOLS: These present slightly different issues
13 so I separated them out. This is a carryover item from the
14 seventy-fifth omnibus objection which, again, seeks to
15 reclassify proofs of claim as equity interest. Today we are
16 proceeding as to claim 479 by Robert Zito and claim 34424 by
17 Lucky Asia Trading Limited. Mr. Zito and Lucky Asia's claims
18 are based on ownership of LBHI common stock. As discussed in
19 the seventy-fifth omni, which Your Honor previously granted the
20 holders of the debtors' stock are entitled to an equity
21 interest in but not a claim against the debtors.

22 In Mr. Zito's opposition to the seventy-fifth omni, he
23 argues that his claim should not be classified as equity
24 because, one, he is seeking to recover for the diminution in
25 value of his common stock due to the debtors' alleged fraud;

1 and, two, that his claim is entitled to priority treatment
2 under Section 507(a) (5) of the Bankruptcy Code as contributions
3 to an employee benefit plan.

4 As discussed in the debtors' reply brief at docket
5 number 17204, both of Mr. Zito's arguments fail. First, Mr.
6 Zito's claim is for loss and stock value due to alleged fraud
7 falls squarely within the scope of Section 510(b). Courts have
8 broadly construed the scope of Section 510(b) to include claims
9 such as Mr. Zito's for fraudulent inducement in the purchase
10 and fraudulent retention in the maintenance of a debtor's
11 stock.

12 Second, the issue of whether Mr. Zito's claim,
13 assuming he had one as opposed to an equity interest, would be
14 subject to priority treatment under Section 507(a) (5) is
15 irrelevant to the question of whether Mr. Zito should be
16 treated as a shareholder in LBHI. Claims for stock held in
17 retirement accounts are still considered equity interest
18 subject to Section 510(b). Regardless, Mr. Zito would not
19 qualify for priority treatment under Section 507(a) (5) which
20 covers claims for contributions to employee benefit plans for
21 services rendered within 180 days of the petition date.

22 Section 507(a) (5) is for the benefit of a debtor's
23 employees and is designed to cover employee compensation such
24 as fringe benefits that are beyond the wage and salary that is
25 granted priority under Section 507(a) (4).

1 Mr. Zito in no way qualifies for priority treatment
2 under Section 507(a)(5). He was not an employee of the debtors
3 or any Lehman-related entity and thus he could not be seeking
4 recovery for services rendered to the debtors. His claim
5 arises from common stock that he purchased and held in an
6 individual retirement account. Mr. Zito's claim is not based
7 on an obligation of the debtors to make a contribution to any
8 employee benefit plan. Accordingly, Mr. Zito's claim directly
9 arises from the ownership of LBHI common stock and he should be
10 treated equally to all the other shareholders in LBHI.

11 Regarding the claim of Lucky Asia Trading Limited,
12 that claim should also be reclassified as equity. Lucky Asia
13 provided no argument for its opposition to the seventy-fifth
14 omnibus objection. Instead, it simply stated that it strongly
15 opposed to the classification of its claim as equity. This is
16 not a valid basis.

17 The debtors attempted to contact Lucky Asia several
18 times but received no response. In our last correspondence,
19 the debtors advised Lucky Asia that if we do not receive any
20 communication from them by May 15th that we would proceed at
21 today's hearing on the assumption that it continued to oppose
22 the debtors' objection. The debtors have not received any
23 response from Lucky Asia and thus we are proceeding today.

24 Lucky Asia's claim is for common stock of LBHI and
25 there is no reason to treat Lucky Asia any different from the

1 holders of LBHI common stock. Accordingly, his claim should be
2 classified as equity.

3 For these reasons, the debtors respectfully request
4 that the objections of Robert Zito and Lucky Asia Trading
5 Limited be overruled and that the seventy-fifth omnibus
6 objection be granted as to their respective claims.

7 THE COURT: Are either of the claimants present or on
8 the telephone? Apparently not. The objection is granted as to
9 both.

10 MS. ECKOLS: Thank you, Your Honor. And that
11 concludes the items going forward on today's agenda.

12 THE COURT: Fine. We are adjourned. Thank you.

13 MR. POLICH (TELEPHONICALLY): Good morning, Your
14 Honor. May I interrupt via CourtCall?

15 THE COURT: Well, we're adjourned. Who are you?

16 MR. POLICH: Your Honor, my name is John Polich. I
17 represent the Ventura County Treasurer tax collector. And
18 perhaps there was a continuance that I am not aware of. But I
19 had thought there would be a hearing this morning on item -- or
20 claim number 65230 that relates to the fortieth omnibus
21 objection by the debtors.

22 THE COURT: Well, I tell you, there's a lot of
23 confusion in the room right now. People are standing and
24 you're talking and I'm halfway out the door.

25 MR. POLICH: I apologize, Your Honor. I was waiting

1 and I thought my matter would be taken up at that time.

2 THE COURT: Well, first of all, let -- everybody can
3 sit down who is standing. And I don't know whether or not this
4 is a matter for today's hearing or something for counsel to
5 discuss on a private telephone call.

6 MS. ECKOLS: Your Honor, any matters that were on
7 omnibus objection 40 were adjourned to June 30th and a notice
8 of adjournment was, I believe, filed a week or two ago and was
9 overnighted -- served via overnight mail. And furthermore, the
10 agenda reflects the adjournment of the fortieth omnibus
11 objection and lists out the claims thereto.

12 MR. POLICH: Okay. Thank you very much. I was
13 misinformed about the date and we will be joining you again on
14 the 30th.

15 THE COURT: Okay. And when you do, be sure to have
16 your phone muted during the hearing 'cause I can tell you're
17 the telltale breather.

18 MR. POLICH: The breather? Oh, my apologies for that,
19 Your Honor.

20 THE COURT: Okay. That's fine. That's my detective
21 work. All right. Thank you. We really are adjourned this
22 time.

23 MR. POLICH: For any later (indiscernible)?

24 THE COURT: You can talk to the claimant on this line
25 if you want, but I'm out the door. We're adjourned.

1 (Whereupon these proceedings were concluded at 11:17 a.m.)
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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Stipulation entered into between the parties re objection to proof of claim number 66462 of JPMorgan Chase Bank to the extent it asserts a claim acquired from Washington Mutual Bank post-petition approved	17	17
Debtors' thirty-fifth omnibus objection to claims granted with respect to the MF Global UK Limited claim	18	23
Debtors' sixty-seventh omnibus objection to claims granted with respect to the claims of Advance Graphic Printing, Incorporated, Halbis US Credit Alpha Master Fund and Pohjola Bank	19	11
Debtors' ninety-fifth omnibus objection to claims granted with respect to the claims of Louis Dreyfus Energy Services L.P.	19	21
Debtors' 103rd omnibus objection to claims granted with respect to the claim of Microsoft Global Finance granted	20	6

I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' 132nd omnibus objection to claims granted with respect to the thirty-three claims named in Exhibit 1 of debtors' proposed order	21	11
Debtors' eighth omnibus objection to claims granted with respect to the claim of Daniel Fryer	22	24
Stipulation entered into between the parties re debtors' 106th omnibus objection to claims with respect to the claim of Great Bay Condominium Owners Association so ordered	24	8
Debtors' 119th omnibus objection to claims granted as to the uncontested objections	24	18
Debtors' 122nd omnibus objection to claims granted as to the uncontested objections	25	7
Debtors' 123rd omnibus objection to claims granted as to the uncontested objections	25	21

I N D E X, cont'd

R U L I N G S

	DESCRIPTION	PAGE	LINE
1			
2			
3			
4			
5	DEBTORS' 124th omnibus objection to claims	26	11
6	granted; debtors have withdrawn their		
7	objection with respect to claim of Richard		
8	Tessmer		
9			
10	DEBTORS' 126th omnibus objection to claims	27	14
11	granted in accordance with form of order		
12	presented to the Court		
13	DEBTORS' 127th omnibus objection to claims	28	6
14	granted as to the uncontested objections		
15	DEBTORS' 128th omnibus objection to claims	28	23
16	granted		
17	DEBTORS' 112th omnibus objection to claims	30	7
18	granted with respect to claims of Bawag		
19	P.S.K. Versicherung AG and Eduardo		
20	Cauterucci, Adriana M. Perilli & Maria F.		
21	Cauterucci		
22	DEBTORS' 117th omnibus objection to claims	30	20
23	granted on an uncontested basis		
24	DEBTORS' 120th omnibus objection to claims	31	18
25	granted on an uncontested basis		

I N D E X, cont'd

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' 121st omnibus objection to claims granted	32	6
Debtors' 129th omnibus objection to claims granted on an uncontested basis	32	20
Debtors' forty-first omnibus objection to claims granted	40	10
Debtors' forty-second omnibus objection to claims granted	40	10
Debtors' forty-third omnibus objection to claims granted; three claims of Floria Fok Yim Sheung disallowed due to its untimeliness	43	23
Debtors' seventy-fourth omnibus objection to claims granted	51	14
Debtors' seventy-fifth omnibus objection to claims granted	55	13

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
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Date: June 3, 2011